

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CR 19-592 WJ

RICK BENAVIDEZ,

Defendant,

**ORDER GRANTING CONTINUANCE OF TRIAL
AND PRETRIAL DEADLINES**

THIS MATTER is before the Court on Defendant's Unopposed Motion to Continue Trial filed December 31, 2020 (Doc. 138). The Court having considered the motion and having considered the holding in *United States v. Toombs*, 574 F.3d 1262 (10th Cir. 2009), finds that the Defendant has by his motion, created a sufficient record to justify granting the motion to continue. See id., 574 F.3d at 1271 (requiring that the record on a motion to continue contain an explanation of why the mere occurrence of the event identified by the party as necessitating the continuance results in the need for additional time). Additionally, the Court finds that further, pursuant to the relevant factors under 18 U.S.C. §3161(h)(7)(B)(i-iv), a continuance is warranted based on the difficulties posed in preparing for trial due to multiple substitutions of counsel and the Coronavirus pandemic therefore necessitating counsel's need for additional time to prepare for trial. Furthermore, a continuance aimed at avoiding unnecessary health risks serves the purposes of the Speedy Trial Act and is consistent with the Court's Administrative Order 20-MC-00004-49 filed December 21, 2020. It is in the interests of justice that Defendant's trial setting and all related time deadlines be continued. Therefore, all the time from the filing of the motion until the beginning of jury selection in this matter shall be excluded for the purposes of

the Speedy Trial Act.

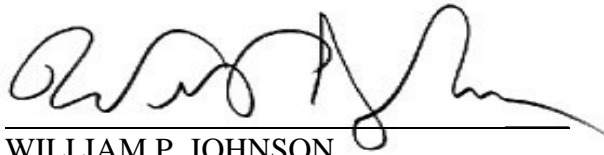
IT IS THEREFORE ORDERED that the Jury Selection/Trial of January 19, 2021 is VACATED. Jury Selection/Trial is reset for **May 3, 2021, at 9:00 a.m.**, on a trailing docket at the United States Courthouse, 333 Lomas Blvd., NW, Cimarron Courtroom, before Judge William P. Johnson in Albuquerque, NM.

IT IS FURTHER ORDERED that the substantive motion deadline is hereby extended until **March 29, 2021**.

IT IS FURTHER ORDERED THAT, SO AS TO CONSERVE JUDICIAL RESOURCES, ANY MOTION TO CONTINUE TRIAL MUST BE FILED NO LATER THAN APRIL 5, 2021.

IT IS FURTHER ORDERED that pursuant to 18 U.S.C. §3161(h)(7)(A), the Court finds that the ends of justice served by granting the unopposed motion for continuance outweigh the best interest of the public and the defendant in a speedy trial.

IT IS FINALLY ORDERED that counsel shall adhere to the instructions and case management deadlines as set forth in the following attachment, "Preparation for Criminal Trial" (includes guidelines for preparation of proposed jury instructions, JERS Informational Letter, and JERS Attorney Guide).

A handwritten signature in black ink, appearing to read 'William P. Johnson', is written over a horizontal line.

WILLIAM P. JOHNSON
CHIEF UNITED STATES DISTRICT JUDGE

**PLEASE REFER TO THE FOLLOWING
ATTACHMENTS FOR ADDITIONAL DEADLINES AND INFORMATION:**

“Preparation for Criminal Trial” (includes guidelines for preparation of proposed jury instructions, JERS Informational Letter, and JERS Attorney Guide).

MOTION TO CONTINUE TRIAL:

Motions for continuance in criminal cases must be filed in accordance with 18 U.S.C. § 3161(h)(7)(A), specifically setting forth the factual grounds justifying the continuance under the statute. In cases involving multiple defendants, counsel must file a joint motion for continuance with all counsel approving said motion. MOTIONS TO CONTINUE MUST COMPLY WITH THE SPECIFIC REQUIREMENTS SET FORTH IN *UNITED STATES V. TOOMBS*, 574 F.3D 1262 (10TH CIR. 2009). THE MOTION “MUST CONTAIN AN EXPLANATION OF WHY THE MERE OCCURRENCE OF THE EVENT IDENTIFIED BY THE PARTY AS NECESSITATING THE CONTINUANCE RESULTS IN THE NEED FOR ADDITIONAL TIME.” *ID.* AT 1271. MOTIONS CONTAINING SHORT, CONCLUSORY STATEMENTS REGARDING THE REASON A CONTINUANCE IS REQUESTED ARE INSUFFICIENT UNDER *TOOMBS* AND WILL BE SUMMARILY DENIED BY THE COURT.

TRAILING TRIAL DOCKET:

Counsel are referred to the trailing docket of cases as they appear for jury/selection trial on the Public Court Calendar for May 3, 2021. The order in which cases appear on the Court Calendar does not necessarily reflect the order in which cases will be tried nor is the assigned trial date a firm setting. Due to the ongoing Coronavirus outbreak, the Court may have to adjust the trial date to comply with the availability of courtrooms prepared to mitigate against the spread of COVID-19.